



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. McTIGUE
DIRECTOR

February 26, 1992
AO-92-01

Arthur S. Fulman, Esq.
64 Annursnac Hill Road
Concord, MA 01742

Re: M.G.L. c.55, s.15

Dear Mr. Fulman:

This letter is in response to your January 17, 1992, letter requesting an advisory opinion regarding the impact of your position as a member of a short term, non-compensated committee appointed by the Board of Selectmen on your ability to serve as treasurer of a political committee without violating the Massachusetts campaign finance laws, specifically M.G.L. c.55, s.15.

You have stated that you are currently a member of a three person, non-compensated committee of the Town of Concord ("Town") entitled the "Legal Services Review Committee" ("LSRC"). The purposes of the LSRC are to review, among other things, the manner in which the Town procures its legal services, whether consolidation of the Town Counsel and Regional School Committee Counsel offers opportunities for financial savings and whether a present Town By-Law requiring that Town Counsel be a resident of the Town should be rescinded. You were appointed to the LSRC in December, 1991, by the Town's Board of Selectmen and expect to serve on the LSRC until it delivers its report to the Selectmen sometime in April or May, 1992. You have previously served on other appointed committees of the Town including, most recently, six years of service on the Town's Finance Committee which ended in May, 1991.

You have further stated that you have been asked to serve as treasurer of a political committee ("Committee") organized on behalf of a candidate running for Selectman in the Town. You have asked if you may serve as treasurer of the Committee if some of the contributions made to the political committee will come from persons in the service of the Commonwealth.

without causing a violation of M.G.L. c.55, s.15.
For the reasons set forth below, it is the opinion of this
Office that your service as treasurer under the circumstances
would be prohibited.

M.G.L. c.55, s.15 provides, in pertinent part:

No officer, clerk or other person in the service of the
commonwealth or of any county, city or town shall, directly
or indirectly, give or deliver to an officer, clerk or
person in said service, or to any councillor, member of the
general court, alderman, councilman or commissioner, any
money or other valuable thing on account of, or to be
applied to, the promotion of any political object whatever
(emphasis added).

The answer to your question turns primarily on whether your
position as a member of the LSRC makes you a "person in the
service" of the Town. A careful reading of the relevant
provisions of chapter 55 as well as previous advisory opinions
of this Office indicate that the phrase "person in the service"
was intended to include any elected, appointed or other person,
regardless of compensation¹, who is providing significant
public services to the commonwealth or one of its subdivisions
or authorities.

Hence, the Office has advised that various appointed and
elected persons are "persons in the service." See AO-82-26
(appointed members of Massachusetts Convention Center
Authority), AO-85-04 (appointed members of the Board of
Trustees of Massachusetts College of Art), AO-88-07 (appointed
members of Board of Trustees of Bristol County Community
College), AO-88-17 (non-compensated, elected members of a local
school committee) and AO-89-10 (appointed Chairman of a Board
of Registrars).

Like the positions noted above, your position as a member
of the LSRC is an official position to which you have been

1. Section 13 governs the conduct of "persons employed for
compensation;" section 15, however, governs the conduct of
"persons in the service." It has been the long held position
of the Office that while section 13 applies only to compensated
public employees, section 15 applies both to compensated and
uncompensated persons if they are determined to be "persons in
the service." Such an interpretation is consistent with the
statutory rule of construction that different words and phrases
in related statutes are presumed to have different meanings
unless the context clearly indicates otherwise.

appointed by the Town's Board of Selectmen. I note that the fact of official appointment or election to an office is an important, if not essential, criterion in determining whether someone is a "person in the service" for purposes of section 15. For example, it is unlikely that members of an unappointed, volunteer High School PTO would be "persons in the service" for purposes of section 15. Compare AO-85-04 (part-time consultant receiving \$1,500 to \$2,000 from a municipality was a "person in the service" of the town for purposes of section 15.) While the consultant was not "appointed," there was an official contractual relationship. In addition, the LSRC has an important public service to perform and although your appointment is for a relatively short duration, e.g., approximately four to six months, such a time period is not insignificant. Therefore, it is the opinion of this Office that you are, while serving as an appointed member of the LSRC, a "person in the service of . . . [a] town" for purposes of M.G.L. c.55, s.15.²

As a practical matter, the above conclusion would appear to preclude you from acting in the capacity of treasurer of the Committee. This is because any other person in the service of the Town (or the commonwealth or any of its subdivisions or authorities) would be prohibited from giving any money or other things of value to you, either directly or indirectly. As the Office concluded in AO-88-18:

We believe it would be very difficult for the treasurer of a [municipal] political committee, as the chief financial person, to avoid receiving monies from other public officials, including full-time employees such as policemen, firemen and teachers, unless there was an outright ban by the committee on receiving such monies.³

2. It follows from this conclusion that your candidate, who is an appointed member of the Town's Finance Committee, is also a "person in the service" of the Town subject to the constraints of section 15. However, while contributions may not be given to him, directly or indirectly, contributions may be made to his political committee. See 1964/65 Op. Att'y. Gen., Rep. A.G., P.D. No. 12 at 112-116.

3. 970 CMR 1.04 mandates that treasurers exercise their best efforts to determine the legality of all contributions at the time of receipt. Contributions which are illegal (or inconsistent with an adopted policy of the political committee such as a ban on contributions from public employees or so-called PAC money) may be returned or refunded in accordance with sections 1.04(8) and (9)(b). Refund policies "must be stated and applied in an open and consistent manner." See also AO-91-27.

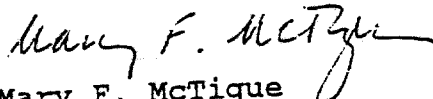
Arthur S. Fulman, Esq.
February 26, 1992
Page 4

In conclusion, it is the Office's opinion that M.G.L. c.55, s.15 precludes you from serving as treasurer of a political committee organized on behalf of a municipal candidate in your community unless the political committee adopts and applies a contributions policy which prohibits contributions by any "persons in the service of the commonwealth or any county, city or town."

This opinion is based solely on the representations made in your letter and has been rendered solely in the context of M.G.L. c.55.

Please do not hesitate to contact this Office if you have any additional questions.

Very truly yours,


Mary F. McTigue
Director